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Dodgy Deck: When a Property Defect is Your Problem, Not the Seller's

"The buyer needs a hundred eyes, the seller not one." (George Herbert)

A Marina Da Gama property. A collapsed wooden deck. A purchase price of R1.55 million and repair costs claimed of just over R100 000. The facts are not complicated. But the legal battle that followed lasted more than a decade.

What happened

The buyers purchased a residential property in October 2013 after the estate agent described it as being in stunning condition. They took occupation in January 2014. Seven months later, the upper wooden deck collapsed. Expert evidence subsequently confirmed that the decks had been constructed without approved plans and were not built to National Building Regulations standards. The defects were latent, meaning they were not visible to a layperson on inspection.

The buyers pursued the estate agent, his close corporation, and the seller across eight separate claims. At the close of the buyers' case, the defendants asked the court to dismiss the matter on the basis that insufficient evidence had been presented against them. The court agreed and dismissed all the claims.

"Stunning" is not a structural warranty

The buyers argued that the estate agent's description of the property as being in "stunning" or "beautiful" condition amounted to an actionable misrepresentation. The court disagreed.

Descriptive sales language of that kind is puffery. It reflects aesthetic opinion, not structural fact. It does not amount to a representation about the integrity of the building, compliance with approved plans, or the absence of latent defects. To cross from puffery into misrepresentation, a statement must assert a verifiable fact. Words like "stunning" do not do that.

The estate agent's duty of disclosure, under the legislation applicable at the time, extended to material facts within his personal knowledge. It did not require him to conduct engineering or technical investigations to uncover hidden structural defects. The defects would not have been visible to a layperson. They were not within his knowledge. No actionable misrepresentation was established.

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The voetstoots clause held

The sale agreement contained a voetstoots (as it stands) clause. To defeat it, the buyers were required to prove two things: that the seller had actual knowledge of the latent defect, and that he deliberately concealed it with the intention to defraud.

Neither was established. The buyers' own evidence undermined the claim. Both buyers described the seller as a decent, honest person. One stated plainly that the seller did not know about the defects. Quick-fix repairs noted by the experts did not change that conclusion. Repairs may reflect ordinary maintenance. They do not, on their own, establish knowledge of a structural defect or an intention to deceive. Fraud is not lightly inferred.

Getting the damages calculation wrong

Even if the buyers had established liability, their damages claim faced a separate problem. The actio quanti minoris, a claim for a reduction in the purchase price, entitles a buyer to compensation for the property's reduced value caused by the defect. The reasonable cost to repair may serve as evidence of that reduction, but no more. The buyers simply claimed replacement costs, which was entirely the wrong way of going about it.

In plain terms

Puffery is not a promise – in fact, it's to be expected in real estate listings. A voetstoots clause is not easily defeated. And the burden of investigating a property before signing rests firmly on the buyer.

Nine court days. Twelve years. Presumably substantial legal costs. Every claim dismissed. Get advice before you sign, not after the deck collapses.

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